IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.6874 of 1998

Shri Dnyaneshwar Sitaram Wagh — Petitioner

Vs.

The Managing Director,
Shree Someshwar Sahakari Sakhar
Karkhana Ltd. & anr. — Respondents

Mr.P.M.Patel for petitioner.
Mr.K.S.Bapat for Resp.no.1.

CORAM: B.H.MARLAPALLE, J.

December 11, 2007.

ORAL JUDGMENT:

1. The dispute in this petition filed by the employee relates to the correction of his date of birth which as per the employer - Karkhana was 1/6/1935 and was sought to be corrected by the petitioner as 1/6/1937.

2. The petitioner came to be employed with the respondent - Karkhana as a Clerk in the Time Office since 1962 and he remained in the said department till his superannuation. He was issued a notice dated 31/5/1995 informing him that he would attain the age of sixty years on 30/6/1995 and, therefore, he would stand retired on that day. After he retired

he approached the Labour Court on or about 10/4/1996 by filing Complaint (ULP) No.152 of 1995 under Section 28 read with Item 1 of Schedule IV of the MRTU & PULP Act, 1971 (for short "the Act"). He claimed that he was illegally terminated from service which amounted to retrenchment without following the mandatory requirements of Section 25F of the I.D. Act. Though the complaint was opposed, the learned Judge of the Labour Court by judgment and order dated 24/7/1997 directed the Karkhana to withdraw the order dated 31/5/1995 and to continue the petitioner in service till 30/6/1997 i.e. till the age of sixty years. This order was challenged by the Karkhana in Revision Application (ULP) No.96 of 1997 and the revision was allowed. The judgment and order of the Labour Court was set aside and the complaint was restored and remanded for fresh trial. On remand the complaint was again allowed as per the judgment and order dated 29/4/1998. The Karkhana in the second round filed Revision Application (ULP) No.49 of 1998 and the learned Member of the Industrial Court was pleased to allow the same by his judgment and order dated 17/7/1998 and hence this petition.

3. Initially the petitioner examined himself as

PW 1 and the Karkhana examined CW 1 - Anandrao Umaji Gajge and CW 2 - Somnath Tukaram Jagtap. However, on remand the complainant examined one more witness UW 2 - Shri Vishwas Dharmaji Yadav, Inspector from the Regional Provident Fund Commissioner's Office at Pune and the Karkhana examined CW 3 - Shri Samruddin Gulab Momin who was working as a Clerk in the Time Office. The Labour Court on assessment of the oral and documentary evidence and the rival contentions advanced before it held that (a) originally the complainant's date of birth was recorded as 1/6/1937 and the same was changed in 1988 unilaterally; (b) the school leaving certificate as per which the date of birth of the petitioner was 1/6/1935 could not be relied upon because the same was obtained by the Karkhana during the pendency of complaint (June 1997) and (c) as per clause 347(3) of the Second Central Wage Board for Sugar Industry, 1970, the dispute in the age of superannuation could be resolved on the basis of the age recorded in the declaration form made under the Employees' Provident Funds Act, 1952. The Labour Court accepted the evidence of the complainant - UW-1 and CW-2 and held that in the Provident Fund record his date of birth was recorded as 1/6/1937 and the same was the correct date of

birth. The learned Member of the Industrial Court did not agree with this reasoning and he held that the impugned order passed by the Labour Court was patently erroneous as it was contrary to the evidence on record and more particularly the admitted position by the complainant himself while in the witness box and his correspondence with the Karkhana.

4. Mr.Patel, the learned counsel for the petitioner submitted that under Section 44 of the Act the Industrial Court has limited revisionary powers and it was not permissible to reappreciate the evidence and discard the findings recorded by the trial Court. He also submitted that the Provident Funds Inspector's evidence was crucial in the matter and whatever was recorded as date of birth in PF record ought to have been treated as more authentic rather relying upon the school leaving certificate. As per Mr.Patel, originally the petitioner's date of birth was recorded as 1/6/1937 and without any notice to him the same was unilaterally changed by the Karkhana to 1/6/1935 as is evident from Exhibit 22. He also sought support in this regard from the oral depositions of CW 2 - Jagtap and CW 3 - Momin. These submissions though appear impressive, can not be

accepted. The petitioner while in the witness box admitted that for the first time on his own he made a representation on 25/2/1995 to the Karkhana (Exhibit 21) and stated that on the basis of the school leaving certificate his date of birth was entered into service record as 1/6/1935 and the same was wrong and hence required corrections. If originally the petitioner's date of birth was recorded as 1/6/1937, the petitioner would not have made any representation. He also admitted that he had studied upto 8th standard in a school at Nira and the said school had issued a school leaving certificate (Exh.53) which recorded his date of birth as 1/6/1935. The petitioner further admitted that in the year 1988 the Karkhana had issued a circular calling upon the employees to inform the date of birth and in response to the same he had informed the Karkhana that his date of birth was 1/6/1935 and had also attached the school leaving certificate. He also admitted that accordingly his date of birth was corrected to 1/6/1935. He further submitted that he had applied to the Life Insurance Corporation for loan and he had shown his date of birth as 1/6/1935. His representation dated 25/2/1995 was solely on the basis of the Gram Panchayat Extract and the order

passed by the learned Judicial Magistrate First Class at Saswad declaring that he was born on 1/6/1937. He had also relied upon the testimony of UW 2 - Yadav. In the cross-examination Shri Yadav admitted that the employer has to submit Form No.5-A which contains the details of the employee including his date of birth. He had placed before the Court Form No.9 in which the petitioner's date of birth was recorded as 1/6/1937. The witness admitted in the cross-examination that the information which was available in Form No.9 was on the basis of the information supplied by the employee to the employer. The witnesses examined by the Karkhana in clear words stated that after the circular in the year 1988 was issued, the petitioner submitted his school leaving certificate and accordingly his date of birth was recorded as 1/6/1935. It was erroneous for the Labour Court to discard the school leaving certificate on the grounds that it was obtained by the Karkhana during the pendency of the complaint. When the complainant himself in his representation dated 25/2/1995 admitted that he had submitted the school leaving certificate and on the basis of which his date of birth was recorded as 1/6/1935, the Labour Court committed a manifest error in discarding the school

leaving certificate attributing the reasons to the Karkhana.

5. Coming to the Provident Fund record, what was placed before the Court was only Form No.9 and which is a declaration made by the employee himself. We cannot be oblivious to the fact that the petitioner himself was the time keeper and the entire service record of all the employees including his own service record was under his custody all along. Nothing stopped him from making representation from 1988 onwards and there was no justification for him to wait till the fag end of his service to submit a representation on 25/2/1995 when he was due to retire on 30/6/1995. A Division Bench of this Court in the case of Kakasaheb Shidu Mhaske Vs. Municipal Corporation of Greater Mumbai & ors. **[2007 (4) Mh.L.J. 837]** considered the main issue as to whether the date of birth recorded as per the declaration made by the employee could be changed at the fag end of the service and answered the same in the negative. In the case of Ramnath Patnaik Vs. State of Orissa **[AIR 1997 SC 2542]** it was held that when the entry was made in the service record and when the employee was in service he did not make any attempt to have

the service record corrected, any amount of evidence produced subsequently was of no consequence. In the case of Burn Standard Co. Vs. Dinbandhu Majundar **AIR 1995 SC 1500]** the petitioner was a qualified person and had sought to change the date of birth. The Supreme Court held that a public servant who approaches at the fag end of service seeking correction of his date of birth could not be allowed to do so. More recently in the case of State of Gujarat and ors. Vs. Vali Mohmed Dosabhai Sindhi **[AIR 2006 SC 2735]** the Supreme Court held that the onus was on the employee to prove about wrong recording of his date of birth in service record and he is expected to satisfy the authorities of such mistake. Even then the Court or the Tribunal has to satisfy itself that such incorrect entry has resulted in real injustice to the applicant and such correction of the date of birth has to be made in accordance with the prescribed procedure within the time specified under the Rules. In the instant case the learned Member of the Industrial Court rightly relied upon the decision in the case of Burn Standard Company Ltd. (Supra) and held that the petitioner himself had taken steps in 1988 for recording his date of birth as 1/6/1935 on the basis of the school

leaving certificate. He approached the employer at the fag end of his service and sought correction in the date of birth and that the Labour Court, fell in manifest error in discarding complainant's own evidence. This exercise of the Industrial Court in reading the evidence cannot be equated with reappreciation of evidence and to decide whether the Labour Court was in error, it is necessary for the Revision Court to read the evidence in toto.

6. In the premises, the reasoning set out by the Industrial Court while dismissing the petitioner's complaint cannot be termed as perverse or patently erroneous so as to call for interference under Article 227 of the Constitution and, therefore, the petition fails. The same is hereby dismissed.

9. Rule discharged with no order as to costs.

(B.H.MARL